Consolidated Plantations Bhd & Anor v Ehambaram & Ors

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-120-92
ABDUL HAMID LP, GUNN CHIT TUAN CJ (MALAYA) AND EUSOFF CHIN SCJ
2 JANUARY 1993

Labour Law *— Special relief allowance — Private sector employees — Whether allowance is contractual and non-discretionary — Whether EPF contributions payable on the allowance — Whether allowance is actually cost of living allowance and to be treated as wages under EPF Act 1991 — Employees Provident Fund Act 1991 s 2*

In 1973 the government, concerned with the rising prices of essential goods which were gravely affecting the lower-income groups, announced that they would pay a special relief allowance ('SRA') to government employees receiving salaries of RM500 per month and below. The SRA was to be temporary and therefore would not be subject to income tax or Employees Provident Fund ('EPF') contributions. Private employers were also urged to co-operate with the government to pay SRA to their lower income employees.

The second appellant, the Malayan Agricultural Producers Association ('MAPA'), and its members including the first appellant, decided to pay their employees the SRA retrospectively, effective from October 1973. The SRA was not intended to be a contractual term and it was therefore not included in the collective agreements entered into between MAPA and the second respondents, the National Union of Plantation Workers ('NUPW').

The respondents filed an action in the High Court seeking determination of the issue of whether the SRA paid to the employee of the first appellant is in fact 'wages' as defined in the Employees Provident Fund Act 1991 ('the Act'). If so, the respondents argued that SRA would attract EPF contributions by operation of law. The High Court judge found that SRA was paid by the employer purely as a temporary relief which could be withdrawn at any time, that it was non-contractual and that it was not intended by the parties that it was to form part of wages. Nevertheless, having examined the definition of 'wages' in s 2 of the Act he took the view that by operation of law, SRA was 'wages' within that definition and therefore attracted EPF contributions. The appellants appealed.

Held, allowing the appeal:

(1) In construing the definition of wages in s 2 of the Act, the important words are 'due to an employee under his contract of service' which follow and qualify the words 'remuneration in money'. Therefore, to qualify as wages, it must be remuneration in money which falls within paras (a), (b) and (c) of the definition. That will include any allowance payable by the employer in

respect of high costs of living provided that the allowance payable is included in the contract of service. A

(2) Evidence shows that SRA was non-contractual and liable to be withdrawn at any time. Moreover, it was only incorporated into the collective agreement as basic wage from 1986. Since SRA did not form part of the contract of service for the period before 1986, the allowance did not attract any EPF contributions. B

(3) **(Per Gunn Chit Tuan CJ)** By using the words 'together with', it was the intention of the legislature to aggregate any allowance payable by the employer to the employee in respect of high cost of living with the remuneration in money which must be due and payable under a contract of service. C

(4) **(Per Eusoff Chin SCJ)** The words 'payable' in the definition of 'wages' is very relevant here. It means that the employer is legally bound or obliged to pay the allowance, which necessarily mean that the high cost of living allowance shall be a contractual term in the collective agreement binding the employer to pay the employee. D

[Bahasa Malaysia summary

Dalam tahun 1973, kerajaan, oleh kerana mengambil berat tentang kenaikan harga barang-barang keperluan yang menyusahkan kumpulan berpendapatan rendah, telah mengumumkan bahawa mereka akan membayar suatu elaun bantuan khas ('SRA') kepada kakitangan kerajaan yang mendapat gaji RM500 sebulan ke bawah. SRA adalah untuk sementara dan oleh itu tidak dikenakan cukai pendapatan atau caruman kumpulan wang simpanan pekerja ('EPF'). Majikan swasta juga telah digalakkan untuk bekerjasama dengan kerajaan untuk membayar SRA kepada pekerja mereka yang berpendapatan rendah. E F

Pemohon kedua, Malayan Agricultural Producers Association ('MAPA') dan ahli-ahlinya termasuk pemohon pertama, telah membuat keputusan membayar pekerja-pekerja mereka SRA secara retrospektif, bermula dari 1 Oktober 1973. SRA tidak dimaksudkan menjadi suatu terma kontraktual dan oleh itu tidak dimasukkan dalam perjanjian kolektif yang telah diikat di antara MAPA dan penentang kedua, National Union of Plantation Workers ('NUPW'). G

Penentang telah memfailkan suatu guaman di Mahkamah Tinggi meminta penentuan isu samada SRA yang telah dibayar kepada pekerja-pekerja pemohon pertama adalah sebenarnya 'upah' sepertimana yang ditakrifkan di dalam Akta Kumpulan Wang Simpanan Pekerja 1991 ('Akta itu'). Jika demikian, penentang berhujah bahawa SRA akan menarik caruman EPF atas kuatkuasa undang-undang. H

Hakim Mahkamah Tinggi berpendapat bahawa SRA telah dibayar oleh majikan semata-mata sebagai relif sementara yang boleh ditarik balik pada bila-bila masa, bahawa ia bukan kontraktual dan tidak dimaksudkan oleh semua pihak yang ia akan menjadi sebahagian daripada upah. Akan tetapi, selepas mengkaji takrifan 'upah' dalam s 2 Akta Kumpulan Wang Simpanan Pekerja 1951, beliau berpendapat I

bahawa atas kuatkuasa undang-undang, SRA adalah 'upah' di dalam taksifan itu dan oleh itu menarik caruman EPF. Pemohon telah membuat rayuan.

Diputuskan, membenarkan rayuan itu:

(1) Apabila mentafsirkan pentakrifan upah dalam s 2 Akta itu, perkataan yang penting adalah 'yang kena dibayar kepada pekerja di bawah kontrak perkhidmatan' yang mengikuti dan membataskan perkataan 'saraan dalam bentuk wang'. Oleh itu, supaya layak disifatkan sebagai upah, ia mesti merupakan saraan dalam bentuk wang yang jatuh di dalam para (a), (b) dan (c) pentakrifan itu. Itu akan termasuk sebarang elaun yang kena dibayar oleh majikan berkaitan dengan kos sara hidup yang tinggi jika elaun yang perlu dibayar itu dimasukkan dalam kontrak perkhidmatan.

(2) Ada bukti menunjukkan bahawa SRA adalah bukan kontraktual dan boleh ditarik balik pada bila-bila masa. Lebih-lebih lagi, ia hanya digabungkan ke dalam perjanjian kolektif sebagai upah asas dari tahun 1986. Oleh kerana SRA tidak merupakan sebahagian daripada kontrak perkhidmatan untuk tempoh sebelum 1986, elaun itu tidak menarik caruman EPF.

(3) (**Oleh Gunn Chit Tuan HB**) Dengan menggunakan perkataan 'termasuklah', adalah tujuan badan perundangan untuk mengagregatkan sebarang elaun yang perlu dibayar oleh majikan kepada pekerja untuk kos sara hidup yang tinggi bersama dengan saraan dalam bentuk wang yang mestilah wajar dan kena dibayar di bawah kontrak perkhidmatan.

(4) (**Oleh Eusoff Chin HMA**) Perkataan 'kena dibayar' dalam takrifan 'upah' adalah sangat berkaitan di sini. Ia bermakna bahawa majikan terikat di sisi undang-undang atau diwajibkan untuk membayar elaun, yang sememangnya bermakna bahawa elaun kos sara hidup yang tinggi sepatutnya suatu terma kontraktual dalam perjanjian kolektif yang mengikat majikan untuk membayar pekerja.]

Cases referred to

1 *PA Pereira & Anor v Hotel Jayapuri Bhd & Anor* [1986] 2 MLJ 1 (refd)
2 *Re Joel* [1943] 1 Ch 311 (refd)
3 *Massy v Eyre & Lloyd* 11 ER 1021 (refd)
4 *Re Howell's Application* [1972] 1 Ch 509; [1972] 3 All ER 662 (refd)
5 *Asia Motor Co (KL) Sdn Bhd v Ram Raj & Anor* [1985] 2 MLJ 202 (refd)
6 *Petaling Rubber Estate Ltd & Anor v Nadarajah & Ors* [1988] 1 MLJ 22 (folld)

Legislation referred to

Employees Provident Fund Act 1951 s 2
Employees Provident Fund Act 1991 s 2

Appeal from: Originating Summons No 99 of 1984 (High Court, Malacca) A

VT Nathan (*Wilfred Abraham* and *P Javasingam* with him) (*Shearn Delamore & Co*) for the appellants.
B Lobo (*Lobo & Associates*) for the first and second respondents.
Prasad Abraham (*Prasad Abraham & Associates*) for the third respondent. B

Cur Adv Vult

Abdul Hamid LP: I have had the advantage of reading the judgments of Gunn Chit Tuan CJ and Eusoff Chin SCJ and I concur with both of them C that the appeal should be allowed and the order of the High Court dated 28 February 1992 granting the respondents an order in terms of prayers 1, 2 and 4 of their originating summons dated 15 June 1984 be reversed. The deposit is also to be refunded to the appellants to account of taxed costs.

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Gunn Chit Tuan CJ (Malaya): This appeal involves the construction of the definition of 'wages' in s 2 of the former Employees Provident Fund Act 1951, which was repealed and replaced by the Employees Provident Fund Act 1991 with effect from 1 June 1991:

> 'wages' means the remuneration in money due to an employee under his contract E of service or apprenticeship, whether agreed to be paid monthly, weekly, daily or otherwise —
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> (a) in respect of the normal periods of work to be performed by the employee;
> (b) where payment is calculated in relation to a set task or tasks, in respect of the number of tasks completed by the employee; or
> (c) where payment is calculated in relation to the volume of work done, in F respect of the work completed by the employee,
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> together with any allowance payable by the employer to the employee in respect, either explicitly or impliedly, of high cost of living:
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> Provided that the wages of an employee in the service of the Government of G Malaysia or of a State or of a statutory or local authority under the new scheme shall be the monthly salary inclusive of pensionable allowances payable in accordance with the salary scales of the new scheme.

The issue arose in the following circumstances in which special relief allowance ('SRA') was paid by Consolidated Plantations Bhd ('the first appellant'), which is a plantation company and a member of the Malayan H Agricultural Producers Assn ('the second appellant'). The second appellant is a registered trade union whose members are employers in the plantation industry and one of its aims is to negotiate collective agreements for its members with employee trade unions, such as the National Union of Plantation Workers ('the second respondent'). Several collective agree- I ments were entered into between the second appellant and the second respondent between 1 October 1973 and 30 April 1986 and in those agreements, SRA was excluded from the wages of the employees. It was not until the Industrial Court Award No 111/86, which came into effect on

A 1 May 1986, that SRA was incorporated into the basic wage of the employees. In this case, there was no evidence of the terms of employment of one Ehambaram a/l Narayanan ('the first respondent'). We were informed by Mr Lobo, counsel for the first and second respondents, that the first respondent was a daily-rated employee. In any case, it was an implied term of the contract of employment between the first appellant and the first respondent, who were bound by the collective agreements, that the rates of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the said agreements.

As a matter of history, the court below was informed that the government through the then Honourable Prime Minister, had announced in a statement issued on 20 October 1973, that the government had decided to pay SRA to employees in the public sector receiving salaries of RM500 per month and below as well as to pensioners, to assist them to overcome the hardship caused by rising prices. It was stated that the said allowance was to be temporary and not subject to income tax or EPF contributions. The government urged the private sector to follow suit and members of the second appellant, including the first appellant, responded to the call by the government to pay their employees SRA with effect from 1 October 1973. SRA was then paid by member companies of the second appellant to their respective employees as a benefit granted in the special circumstances prevailing in 1973. It was paid outside the employees' contract of service, ie outside the said collective agreements entered into between the second appellant and the second respondent, all of which were deemed to be awards of the Industrial Court under s 17 of the Industrial Relations Act 1967. However, despite the express agreements between the second appellant and the second respondent to treat SRA as a non-contractual payment, the first and second respondents filed an originating summons in the High Court at Melaka on 15 June 1984, to seek a declaration that upon a true construction of s 2 of the Employees Provident Fund Act 1951, SRA paid by the first appellant since 1 October 1973, was included in his 'wages' and hence attracted monthly EPF contributions.

Wan Yahya J, in a judgment delivered in the High Court at Shah Alam on 28 February 1992, found that SRA paid by the first appellant since 1 October 1973, was a temporary relief payment which was paid pursuant to the government's call to provide a temporary payment to alleviate the financial difficulties of the lower income workers and was free from income tax and EPF contributions. His Lordship also held that there was no intention between the parties to treat SRA as wages and that the first and second respondents had failed to prove that SRA was contractual and non-discretionary. It was pointed out to us by Mr VT Nathan, senior counsel for the first and second appellants, that there was no cross-appeal by the respondents against those findings of fact by the learned High Court judge.

Learned counsel for the appellants then referred to the grounds of judgment of Wan Yahya J and pointed out that the learned trial judge however, held that 'wages' under the Employees Provident Fund Act 1951 was not confined to remuneration due to the employee under his contract of service but also included 'any other allowance payable in respect of high

cost of living' (see p 24 of the appeal records), and that accordingly, SRA would fall within the aforesaid definition of wages. Counsel stated that it would appear that the learned trial judge came to that conclusion on the basis of the words 'together with' in the phrase 'together with any allowance payable by the employer to the employee in respect, either explicitly or impliedly, of high cost of living' and had the effect of bringing within the definition of 'wages' all payments for high cost of living regardless of whether they are due under his contract of service or not. Counsel submitted that the learned trial judge fell into error in considering that all payments in respect of high cost of living fell within the definition of 'wages' without considering whether such payments were remuneration due under the contract of service. He contended that the word 'due' meant that which may be recovered by action and points to debts or moneys arising under a contractual obligation. It was also contended that not all remuneration due under a contract of service are 'wages' but only contractual payments which are due in respect of paras (a), (b) or (c) of the definition section and contractual payments in respect of high cost of living.

We were reminded of the following passage in the judgment of Lord Mackay of Clashfern in the case of *PA Pereira & Anor v Hotel Jayapuri Bhd & Anor*,[1] which was concerned with whether service charges formed part of the wages and attracted EPF contributions under the Employees Provident Fund Act 1951:

> In practice the amount of contribution to be made by an employee and by his employer in respect of his employment for a particular period, say of a month, will be determined after the conclusion of that month, will be determined after the conclusion of that month. The total reward to which in terms of his contract the employee is entitled can then be determined in the light of what has occurred during that month, but the total remuneration in money which is due to the employee may not be subject to contributions under the Act. In a case to which para (a) of the definition applies these contributions will apply only to such part of the remuneration as was due in respect of the normal periods of work to be performed by the employee as these are set out in the contract of service.

Turning to the words 'together with', counsel submitted that they do not have the effect of doing away with the condition precedent that the allowance must be due under a contract of service. Like the learned trial judge, counsel also referred to in *Re Joel*[2] and submitted that the UK Chancery Division had clearly decided that a bequest of a leasehold house 'together with its contents' is a single gift and not two separate gifts and the legatee may not disclaim the gift of the house and retain its contents.

Counsel also submitted that for a cost of living allowance to be 'wages', it must be *due and payable* under a contract of service. He contended that the word 'payable' carries the same meaning as 'due', which means entitled or that which one is under an enforcable obligation to pay (*Massy v Eyre & Lloyd*;[3] *Re Howell's Application*[4]).

It was also counsel's submission that the learned judge had failed to recognize that the words 'due under the contract of service' also apply to allowances payable in respect of the high cost of living. His failure to give effect to the express words in the definition resulted in his holding that

A SRA, which was discretionary and non-contractual, was included in the definition of 'wages'.

Mr Nathan then referred to that part of the learned trial judge's judgment where he stated as follows:

> It is therefore for the plaintiff to show that the SRA in the present case, arises out
B of the contractual terms entered into between the plaintiff and the first defendant. Various correspondents as well as the collective agreement have been produced in court. My impression after reading them is that there was no such intention between the parties to treat SRA as wages.

He pointed out that his Lordship appeared to have accepted the proposition
C that it was clear from the definition that SRA must be a contractual payment before it can fall within the definition of 'wages'.

Reference was also made to two cases in which the question of the nature of SRA was considered in the context of the Employment Act 1955, and the Wages Council Act 1947. In the case of *Asia Motor Co (KL) Sdn Bhd v Ram Raj & Anor*,[5] it was held, inter alia, that the word 'remuneration' in the
D Wages Council Act 1947 means wages or basic wages and does not include other items such as SRA, commission or bonus. In the case of *Petaling Rubber Estate Ltd & Anor v Nadarajah & Ors*,[6] this court also held, inter alia, that in its true and original concept, SRA is a temporary allowance payable over and above the wages of the employees. Unless there is evi-
E dence to show that the parties have contracted otherwise, SRA cannot be regarded as part of the wages. In other words, unless the parties agree that SRA should be incorporated as part of the wages, it must be regarded according to its original concept and character, ie payable over and above wages. We would pause here to reiterate the following passage in the judgment of Hashim Yeop A Sani SCJ (as he then was) in that case:

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> Employers pay SRA in various ways. Some may pay SRA because payment of SRA is incorporated in a collective agreement. Some may pay SRA voluntarily and some after negotiations. Each case has to be determined on its own facts to see whether the SRA payable retains its original character or changes to something else. In its true and original concept SRA is a temporary allowance payable
G over and above the wages of the employees. Unless there is evidence to show that parties have contracted otherwise SRA cannot be regarded as part of wages. In other words unless the parties agree that SRA should be incorporated as part of wages SRA must be regarded according to its original concept and character ie payable over and above wages.

Counsel submitted that the learned trial judge, in distinguishing those two
H cases in his grounds of judgment, had failed to appreciate that the common thread in the definition of 'wages' in both the Employment Act 1955 and the Employees Provident Fund Act 1951, was the condition precedent that the payment of SRA must be contractual and that if payment of such allowance was not contractual, it was excluded from the definition.

I Mr Lobo stated that it was intended that SRA should be included in the wages of the employees but did not refer to us to any piece of evidence to support that statement. Mr Nathan, however, referred us to a document entitled 'MAPA/NUPW Agreement 1976' appearing at p 341 of the appeal

records, in which it was agreed that certain payments including SRA should be excluded for the purposes of determining 'present wage'. We have perused the records of appeal and found that in 1976, it was specifically agreed that wages would not include SRA. Another collective agreement was entered into between the parties in 1979 and in that agreement too, SRA was excluded from the wages of the employees. It was not until 1986, when the Industrial Court Award No 111/86, which came into force on 1 May 1986, that SRA was incorporated into the basic wage of the employees. There was therefore evidence to support the learned trial judge's finding that it was never the intention of the parties to treat SRA as wages until the Industrial Court award in 1986.

In construing the definition of 'wages' in s 2 of the former Employees Provident Fund Act 1951, I consider that the important words are 'due to an employee under his contract of service' which follow and qualify the words 'remuneration in money'. I therefore agree with the contention of counsel for the appellants that to qualify as wages, it must be remuneration in money which falls within paras (a), (b) and (c) of the said definition.

It is also my view that, by using the words 'together with' in the definition, it was the intention of the legislature that any allowance payable by the employer to the employee in respect of high cost of living must be payable under a contract of service to fall within the definition of wages and this view is fortified by the use of the words 'explicitly or impliedly'. 'Explicitly' of course means expressly stated and the word 'implied' means 'necessarily intended though not expressed' in the contract of service. In other words, by the use of the words 'together with', it was the intention of the legislature to aggregate any allowance payable by the employer to the employee in respect of high cost of living with the remuneration in money which must be due and payable under a contract of service.

For the reasons stated above, I would allow this appeal with costs here and in the court below. The order of the High Court dated 28 February 1992, granting the respondents an order in terms of prayers 1, 2 and 4 of their originating summons dated 15 June 1984, is hereby reversed. The deposit is also to be refunded to the appellants to account of taxed costs.

Eusoff Chin SCJ: On 20 October 1973, the then Prime Minister, the late Tun Abdul Razak, announced that the government, being concerned that rising prices of essential goods were gravely affecting the lower-income groups, would, among other measures to be taken, pay a special relief allowance ('SRA') to Federal and State Government employees receiving salaries of RM500 per month and below. The rate of this allowance was:

Monthly salary	Monthly special relief allowance
$300 and below	$30
$301 to $400	$20
$401 to $500	$15

These SRA were to be temporary and therefore, *would not be subject to income tax or Employees Provident Fund ('EPF') contributions*. To alleviate the sufferings of the lower-income groups in the country, private employers

were urged to co-operate with the government to pay SRA to their lower-income employees.

The second appellant, the Malayan Agricultural Producers Association ('MAPA') and its members including the first appellant, responded positively to the call by the government to pay their employees SRA.

By a letter dated 22 November 1973, MAPA informed the second respondent, the National Union of Plantation Workers ('NUPW'), that members of the MAPA would pay SRA. The NUPW responded that they would not accept anything less than what was announced by the government and that the Prime Minister's request should be complied with in toto.

MAPA then directed its members, comprising about 193 plantation companies, through a circular dated 10 January 1974, to pay their employees the SRA retrospectively, effectively from 1 October 1973. The NUPW acknowledged that the payments of the SRA as directed by MAPA was in accordance with the Prime Minister's request.

Conceivably, the payment of this SRA was not intended to be a contractual term, and the SRA was therefore not included in the collective agreements entered into between MAPA and NUPW. Consequently, in the successive collective agreements signed between MAPA and NUPW, the SRA was excluded. It was only in the collective agreement between MAPA and NUPW approved by the Industrial Court vide Industrial Court Award No 111/86 that the SRA was incorporated into the basic wage of an employee effective from 1 May 1986, and thereafter, payments of SRA ceased.

It is not in dispute that no EPF contributions were (as directed by the Prime Minister) ever made by the employer and the employee in respect of the SRA. However, on 15 June 1984, 12 years after the SRA was first paid, the plaintiffs filed an action in the High Court at Malacca seeking a declaration that upon the true construction of s 2 of the Employees Provident Fund Act 1951 ('the Act'), the first appellant (employer) and the first respondent (employee) were liable to make EPF contributions on the SRA effective from 1 October 1973.

It is to be observed that the rate of EPF contributions per month by the employer and by the employee is based on the amount of monthly *wages* payable to the employee, and the amount of contributions are as provided for in the Third Sch to the Act. If therefore, the SRA was part of wages payable to the employee, the SRA would in law attract EPF contributions.

In the High Court, the learned judge made a finding of fact that the SRA was paid by the employer purely as a temporary relief which could be withdrawn at any time, that it was non-contractual, and that it was not intended by the parties that it was to form part of wages. Nevertheless, having examined the definition of 'wages' in s 2 of the Act, he formed the view that by operation of law, the SRA was 'wages' within that definition.

In determining whether the SRA was 'wages' within the definition, it is relevant to refer to *Petaling Rubber Estate Ltd v Nadarajah*,[6] at p 24 where Hashim Yeop Abdullah Sani SCJ (as he then was) held:

> Employers pay SRA in various ways. Some may pay SRA because payment of SRA is incorporated in a collective agreement. Some may pay SRA voluntarily

and some after negotiations. Each case has to be determined on its own facts to see whether the SRA payable retains its original character or changes to something else. In its true and original concept SRA is a temporary allowance payable over and above the wages of the employees. Unless there is evidence to show that parties have contracted otherwise SRA cannot be regarded as part of wages.

What is important however is to place a proper construction to the word 'wages', as defined in s 2 of the Act as follows:

'wages' means the *remuneration* in money due to an employee *under his contract of service* or apprenticeship, whether agreed to be paid monthly, weekly, daily or otherwise —

(a) in respect of the normal periods of work to be performed by the employee;
(b) where payment is calculated in relation to a set task or tasks, in respect of the number of tasks completed by the employee; *or*
(c) where payment is calculated in relation to the volume of work done, in respect of the work completed by the employee,

together with any allowance *payable* by the employer to the employee in respect, either explicitly or impliedly, of high cost of living:

Provided that the wages of an employee in the service of the Government of Malaysia or of a State or of a statutory or local authority under the new scheme shall be the monthly salary inclusive of pensionable allowances payable in accordance with the salary scales of the new scheme. (Emphasis added.)

The learned High Court judge held that in his view:

'wages' under the EPF Act is not confined to the remuneration due to the employee under his contract of service in circumstances specified under paras (a), (b) and (c) of that definition only, but will include any other allowance payable in respect of high cost of living. It is immaterial in what name one calls it — SRA or COLA but so long as it can be taken explicitly or impliedly as an allowance paid by the employer to relieve the employee of the high cost of living, it will fall within the definition of wages. It must be observed that this supplemental or conjoining limb to include other allowance for high cost of living is not to be found in the definition of 'wages' in the Employment Act as discussed in the earlier cited cases which are clearly distinguishable from the present case.

In the light of the above, it seems clear that what the learned judge did was to separate the definition of wages into two limbs, the first limb finishing at the end of para (c) *in the definition*, and the second limb begins from the words 'together with'. This conclusion was arrived at by the learned judge even though he had construed the words 'together with' to mean 'inclusive of'.

Whilst I do agree that the words 'together with' was correctly held to mean 'inclusive of', I am however of the view that the word 'wages' as defined means remuneration, payment, or compensation in money due to an employee under his contract of service, in respect of work done and calculated in accordance with the circumstances described under paras (a), (b) or (c) including any allowance payable by the employer in respect of high cost of living provided that the allowance payable by the employer is included in the contract of service. That part of the definition beginning with the words 'together with' should not be read disjointedly, or in isolation but must be read together as a whole, and when so read, the meaning

A is clear in that the remuneration in money including high cost of living allowance, due to an employee to constitute 'wages' must be under his contract of service.

Further, the word 'payable' in the definition of 'wages' is very relevant as in the context used here, it means that the employer is legally bound or obliged to pay the allowances, which necessarily mean that the high cost of B living allowance shall be a contractual term in the collective agreement binding the employer to pay the employee. In the instant case, the evidence shows that the SRA was non-contractual, liable to be withdrawn at any time. It was only incorporated into the collective agreement as basic wage, in the Industrial Court Award No 111/86 effective from 1 May 1986.

C Since the SRA did not form part of the contract of service for the period before 1 May 1986 between the employer and the employee, the allowance did not attract any EPF contributions.

I would therefore allow this appeal with costs here and in the High Court. The deposit of RM500 is returned to the appellant.

D *Appeal allowed.*

Reported by Prof Ahmad Ibrahim

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